

**REMARKS**

Claims 9-13 are pending. Claim 9 has been amended.

Claims 9-13 stand rejected under 35 U.S.C. § 102(a) as being anticipated by applicant's Admitted Prior Art (APA). A telephone conversation initiated by applicant's representative with the Examiner handling this application to discuss interpretation of the APA resulted in no agreement being reached. Reconsideration of this rejection respectfully is requested.

Claim 9 recites a memory device that includes "a gate stack pair with a space between them defining a contact opening" and "a vertical oxide spacer adjacent to each gate stack of said gate stack pair." The gate stack pair also includes "a respective continuous nitride layer overlaying each said vertical oxide spacer and each said gate stack, neither of said continuous nitride layers extending to overlay said contact opening between said gate stack pair."

The discloses a gate stack pair with a vertical oxide spacer 11 adjacent to each gate stack. The Office Action asserts FIG. 2C of the APA discloses a respective continuous nitride layer 12 overlaying each vertical oxide spacer and each gate stack, and that FIG. 2D discloses that neither of the continuous nitride layers extends to overlay the contact opening between the gate stacks.

Applicant notes that FIGS. 2C and 2D of the APA illustrate steps in a fabrication process. At the step illustrated in FIG. 2C, applicant agrees that the gate stack pair features a continuous nitride layer 12 overlaying each vertical oxide spacer and each gate stack. Applicant notes, however, that the gate stack does not meet the limitation recited in claim 9 that neither of the continuous nitride layers extends to

overlay the contact opening between the gate stacks. Instead, nitride layer 12 extends between the gate stacks and overlays the contact opening.

The fabrication step illustrated in FIG. 2D produces a gate stack pair. Each gate stack features a vertical nitride layer 13. The vertical nitride layers 13 do not extend to overlay the contact opening between the gate stacks. The vertical nitride layers 13 do not, however, overlay each vertical oxide spacer and each gate stack.

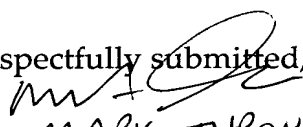
FIG. 2C illustrates an interim device that meets some of the claim limitations. FIG. 2D illustrates another interim device that meets claim limitations not met by the device shown in FIG. 2C. Neither figure discloses all of the features recited in claim 9, however, as would be required to establish *prima facie* anticipation.

Claim 9 is patentable over the APA. Claims 10-13 depend from claim 9 and are patentable over the APA for at least the same reasons.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

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Respectfully submitted,

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